

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #5	CCRB Case #: 201710288	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/12/2017 6:04 PM	Location of Incident: 89th Avenue and 163rd Street	Precinct: 103	18 Mo. SOL 6/12/2019	EO SOL 6/12/2019	
Date/Time CV Reported Wed, 12/13/2017 1:44 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/13/2017 1:44 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Daniel Gasperetti	4088	950480	103 PCT
2. SGT Sean Finnegan	01457	943238	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Finnegan	Abuse: Sergeant Sean Finnegan stopped § 87(2)(b)	
B.DTS Daniel Gasperetti	Abuse: Detective Daniel Gasperetti stopped § 87(2)(b)	
C.DTS Daniel Gasperetti	Abuse: Detective Daniel Gasperetti frisked § 87(2)(b)	
D.SGT Sean Finnegan	Abuse: Sergeant Sean Finnegan searched § 87(2)(b)	
E.SGT Sean Finnegan	Abuse: Sergeant Sean Finnegan strip-searched § 87(2)(b)	
F.SGT Sean Finnegan	Abuse: Sergeant Sean Finnegan threatened to arrest § 87(2)(b)	
G.SGT Sean Finnegan	Force: Sergeant Sean Finnegan used physical force against § 87(2)(b)	
H.DTS Daniel Gasperetti	Force: Detective Daniel Gasperetti used physical force against § 87(2)(b)	
I.SGT Sean Finnegan	Abuse: Sergeant Sean Finnegan threatened § 87(2)(b) with the use of force.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB by phone on December 13, 2017. § 87(2)(b) also reported this incident by phone to IAB. The corresponding complaint was received under IAB Log 2017-49877.

On December 12, 2017, at approximately 6:04 p.m., § 87(2)(b) was walking in the vicinity of 89th Avenue and 163rd Street in Queens. § 87(2)(b) was stopped by Sgt. Sean Finnegan and Det. Daniel Gasperetti of the 103rd Precinct (**Allegation A-B: Abuse of Authority**, § 87(2)(g)). Det. Gasperetti frisked § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g)). Sgt. Finnegan allegedly searched § 87(2)(b)'s pockets (**Allegation D: Abuse of Authority**, § 87(2)(g)). Sgt. Finnegan allegedly strip-searched § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)). Sgt. Finnegan allegedly threatened to arrest § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g)). Sgt. Finnegan and Det. Gasperetti allegedly pushed § 87(2)(b) to the ground (**Allegation G-H: Force**, § 87(2)(g)). Sgt. Finnegan allegedly threatened to tase § 87(2)(b) (**Allegation I: Force**, § 87(2)(g)).

There is no video evidence of the interaction between § 87(2)(b) and the police officers. However, there is video which captures § 87(2)(b)'s actions following the incident (BR01-03).

No arrests or summonses resulted from this incident.

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Sean Finnegan stopped § 87(2)(b)

Allegation B – Abuse of Authority: Detective Daniel Gasperetti stopped § 87(2)(b)

Allegation C – Abuse of Authority: Detective Daniel Gasperetti frisked § 87(2)(b)

§ 87(2)(b) testified that he was walking by himself in the vicinity of 89th Avenue and 163rd Street across the street from a post office (BR04). § 87(2)(b) was wearing a black jacket, black sweater, black sweatpants, black and white sneakers, and a black ski mask. § 87(2)(b) became lost and turned around to look at street signs. An unmarked car stopped near him. Sgt. Finnegan exited the car said, “Can we talk to you? Can you take your hands out of your pockets? We got a call that someone matching your description was in the area with a gun.” Sgt. Finnegan turned § 87(2)(b) to face a gate and frisked his chest and pant pockets.

Event documents associated with this incident revealed a male caller stated he saw a teenager with a gun who had fired two shots (BR05). The suspect was described as wearing a black jacket, black sweatpants, black and white shoes, and a black ski mask. The suspect was described as being near a library and post office. The call was made from § 87(2)(b)'s phone number.

Det. Gasperetti prepared a UF-250 stop report (BR06). The stop report reflects the officers responded to a shots fired job and observed a male matching the description of the suspect. The male's outermost garments were frisked because the suspect was reportedly in possession of a firearm and had fired two shots.

§ 87(2)(g)

While on patrol, the officers received a radio run reporting shots fired in the vicinity of Jamaica Avenue and Union Hall Street. The caller described the suspect as a black male, wearing all black, black and white sneakers, and a ski mask. The officers responded within a couple minutes to the area. The officers observed § 87(2)(b) dressed in all black, wearing a ski mask, and wearing black and white sneakers who exactly matched the description of the suspect in the radio run. Based on the exact match to the physical description and his proximity to the location, the officers stopped § 87(2)(b) believing him to be the suspect of the radio run. Based on the belief that § 87(2)(b) was the suspect of a shooting, Det. Gasperetti frisked him for weapons. The officers did not make any other observations that led them to suspect § 87(2)(b) possessed a weapon.

PG 212-11 states “a stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor... A frisk is authorized when the member of service reasonable suspects the person is armed and dangerous” (BR09).

In United States v. Davis, 235 F.3d 584 (2000), the court found that reasonable suspicion existed where a person matching the physical description of a shooting suspect was found in the vicinity of the incident location, as reported to officers in a 911 call (BR10).

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§ 87(2)(g)

Allegation D – Abuse of Authority: Sergeant Sean Finnegan searched § 87(2)(b)

§ 87(2)(b) testified that after he was frisked Sgt. Finnegan reached into his left pant pocket and removed his phone and wallet. Sgt. Finnegan removed § 87(2)(b)'s ID from his wallet. Sgt. Finnegan tried to turn on the phone but it was password protected. During the stop, § 87(2)(b) received a call from the 911 operator. § 87(2)(b) informed the operator that he was with the police. § 87(2)(b) denied that he called 911 and instead asserted that his friend had used his phone to call 911.

The UF-250 stop report prepared by Det. Gasperetti reflects that no search was conducted.

Sgt. Finnegan and Det. Gasperetti both testified that § 87(2)(b) explained to them that he had been involved in a dispute with a friend. § 87(2)(b) told the officers that his friend had used his phone to call 911. § 87(2)(b) voluntarily showed the officers his cell phone call history which reflected a call to 911. The officers noticed that § 87(2)(b)'s phone number was the same as the call back number on the 911 job. § 87(2)(b)'s story did not make any sense to the officers and he was released after it was determined there was no firearm. Sgt. Finnegan and Det. Gasperetti both denied that § 87(2)(b) was ever searched.

Sgt. Finnegan testified that § 87(2)(b) gave Det. Gasperetti his ID for a stop report. § 87(2)(b) had been holding a cell phone which prompted Sgt. Finnegan to ask to see his call log.

Det. Gasperetti did not remember if § 87(2)(b) verbally stated his name or if he provided ID to the officers. The only hard object Det. Gasperetti felt when he frisked § 87(2)(b) was something he believed was a cell phone in one of his pockets. § 87(2)(b) removed his phone from his pocket himself while the officers were investigating the 911 call.

PG 212-11 states “a search occurs when the officer places his/her hands inside a pocket or other interior portions of a person’s clothing or personal property to remove an object that the member felt during a frisk and reasonably suspects is a weapon or dangerous instrument” (BR09).

§ 87(2)(g)

Allegation E – Abuse of Authority: Sergeant Sean Finnegan strip-searched § 87(2)(b)

Allegation F – Abuse of Authority: Sergeant Sean Finnegan threatened to arrest § 87(2)(b)

Allegation G – Force: Sergeant Sean Finnegan used physical force against § 87(2)(b)

Allegation H – Force: Detective Daniel Gasperetti used physical force against § 87(2)(b)

Allegation I – Abuse of Authority: Sergeant Sean Finnegan threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that Sgt. Finnegan unfastened his belt. Sgt. Finnegan stated, “I need to check to make sure you don’t have any weapons. Sgt. Finnegan stuck his hand down the front of § 87(2)(b)'s pants and underneath his underwear. § 87(2)(b) did not feel comfortable and punched Sgt. Finnegan in the groin. Sgt. Finnegan stated, “You just assaulted a police officer. I could take you in for assaulting a police officer.” Sgt. Finnegan and Det. Gasperetti pushed § 87(2)(b) to the ground. § 87(2)(b) pulled his arms and body away from the officers. Sgt. Finnegan said, “Stop resisting or you’re going to get tased.” § 87(2)(b) was handcuffed and taken to the stationhouse where he spent the night. § 87(2)(b) was released from custody because it was his first offense. § 87(2)(b) did not sustain any injuries.

In his initial phone statement to the CCRB and to IAB regarding this incident, § 87(2)(b) reported that he had been stopped, searched, and strip-searched. When asked during his interview why he omitted so many allegations when he reported the incident to the CCRB, § 87(2)(b) stated that he was in shock from the incident and was afraid his father may get in trouble.

The UF-250 stop report notes the stop time as 6:04 p.m. The event documents reveal that at 6:04 p.m., the anti-crime unit reported to the central dispatcher that there was no firearm and that the job was a dispute. The event documents do not indicate that anyone was arrested.

Video footage was obtained from an NYPD TARU camera posted at 89th Avenue and 164th Street which is one block east of the incident location. The video does not capture the interaction with the police officers. § 87(2)(b) appears in the frame of this camera from 6:04:45 p.m. to 6:06:46 p.m. walking eastbound away from the incident location.

The 103rd Precinct command log and prisoner holding pen roster contain no entries regarding § 87(2)(b) (BR11-12).

Sgt. Finnegan and Det. Gasperetti both testified that § 87(2)(b) was released from the stop location and he walked away after their investigation revealed there was no weapon. § 87(2)(b) never used any physical force against the officers and none was used against him. Sgt. Finnegan did not threaten to arrest § 87(2)(b) and did not threaten to tase him. No officer ever reached into § 87(2)(b)'s pants.

Sgt. Finnegan provided detailed testimony regarding the circumstances in which a strip-search would be conducted. Sgt. Finnegan explained that strip-searches are conducted if there is reasonable suspicion to believe someone is concealing weapons or contraband on their person. Strip searches are conducted in a private location, would never be conducted on the street, and would be documented in multiple places. Strip searches are an invasive process.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the second complaint filed by § 87(2)(b) with the CCRB. § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
- Sgt. Finnegan has been a member of the service for 11 years and has no substantiated allegations. § 87(2)(g) Sgt. Finnegan has a prior physical force

allegation in case 201106509 which was Exonerated by the Board and a threat of arrest allegation in case 201109943 which was closed as Complainant Uncooperative.

- Det. Gasperetti has been a member of the service for six years and has two prior substantiated allegations. In case 201208924 the Board substantiated a frisk and a search allegation, recommended command discipline, and the NYPD imposed instructions. § 87(2)(b) Det. Gasperetti has one other stop allegation in case 201208924 which was Exonerated by the Board.

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- The NYC Comptroller's Office responded to a request indicating that no notice of claim has been filed by § 87(2)(b) regarding this incident (BR14).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 5

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date